

Page 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
STALIN RODRIGO REYES ESPINOZA,

PLAINTIFF,

-against-

Index No.: 515197/2019
DAVS PARTNERS LLC AND KALNITECH
CONSTRUCTION COMPANY,

DEFENDANTS.

-----X
COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
STALIN RODRIGO REYES ESPINOZA,

PLAINTIFF,

-against-

ASK ELECTRICAL CONTRACTING CORP.,
DEFENDANTS.

-----X

DATE: April 5, 2023

TIME: 10:05 A.M.

(DEPOSITION OF DAVID KLEEMAN)

Page 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATE: April 5, 2023

TIME: 10:05 A.M.

VIRTUAL ZOOM EXAMINATION BEFORE
TRIAL of the Defendant, DAVS PARTNERS LLC,
by DAVID KLEEMAN, taken by the Respective
Parties, pursuant to an Order, held
remotely at the date and time above, before
May Jean Wu, a Court Reporter and Notary
Public of the State of New York.

A P P E A R A N C E S:

GORAYEB & ASSOCIATES, P.C.

Attorneys for Plaintiff(s)
STALIN RODRIGO REYES ESPINOZA
100 William Street Suite 1900
New York, New York 10038
BY: GREGORY GASTMAN, ESQ.

GALLO VITUCCI KLAR LLP

Attorneys for Defendant(s)
DAVS PARTNERS LLC
1 Bridge Street Suite 140
Irvington, New York 10533
BY: JOSEPH J. RAVA, ESQ.

MARSHALL CONWAY BRADLEY GOLLUB & WEISSMAN,
P.C.

Attorneys for Defendant(s)
KALNITECH CONSTRUCTION COMPANY
45 Broadway
New York, New York 10006
BY: MAURICE RECCHIA, ESQ.

LAW OFFICE OF KEVIN P. WESTERMAN

Attorneys for Defendant(s)
ASK ELECTRICAL CONTRACTING CORP.
990 Stewart Avenue Suite 400
Garden City, New York 11530
BY: GEORGIA ALIKAKOS, ESQ.

* * *

1 KLEEMAN

2 A. Yes.

3 Q. I apologize. There was some
4 audio delay for which I apologize.

5 Sir, we've been talking about
6 A.S.K. Electrical, the company that you've
7 been working with or for. That's A.S.K.
8 Electrical Contracting Corporation, is that
9 correct?

10 A. Yes, at that time that is
11 correct at that time.

12 Q. Okay, there have been some name
13 changes?

14 A. Correct.

15 Q. Okay, is there a newer version
16 of that? Is there a newer name or newer
17 version or is that the name?

18 A. Yes, it's the A.S.K. Electrical
19 Corp., which was the latest one that I
20 stated that was the current.

21 Q. Okay, thanks.

22 Do you remember what was the
23 name of the company before that?

24 A. A.S.K. Electrical Contracting
25 Corp.

1 KLEEMAN

2 Q. Forgive me, sir, but the new
3 name is what?

4 A. A.S.K. Electrical Corp., we
5 dropped the "Contracting".

6 Q. Thank you.
7 It's just the word
8 "Contracting"?

9 A. Yes.

10 Q. Thank you.

11 Sir, so the lease is between
12 A.S.K. and who? Who's the owner or the
13 landlord?

14 A. That would be Davs Partners
15 over here for today.

16 Q. Okay, thank you.

17 Sir, back to the electrical
18 company for a couple of moments, I'm going
19 to ask you about employees, ownership and
20 things like that. Sir, do you have any
21 ownership interest in the electrical
22 company, A.S.K.?

23 A. I do.

24 Q. Okay, and you're the full
25 owner? You're a partial owner? Who are

1 KLEEMAN

2 Q. Okay, soon after the
3 construction started?

4 A. Correct.

5 Q. Okay, thank you.

6 Sir, was there a general
7 contractor?

8 MR. GASTMAN: Off the record.

9 (Whereupon, an off-the-record
10 discussion was held.)

11 Q. Back on the record, sir, was
12 there a general contractor hired to assist
13 on this project?

14 A. Yes.

15 Q. Who was the general contractor
16 company, please, for this project?

17 A. Kalnitech.

18 Q. Sir, was there a written
19 agreement or a contract for Kalnitech to
20 come in as the general contractor?

21 A. Yes.

22 Q. Thank you.

23 Sir, do you know who prepared
24 the contract? Did Kalnitech prepare it and
25 hand it to A.S.K. or did A.S.K. prepare it

1 KLEEMAN

2 that we used to do a lot of work for. He
3 branched out and was leaving them and went
4 out on his own. I believe this was the
5 first job he did.

6 Q. Thank you.

7 Well, was that Majestic? I
8 think I heard the name at some point, but I
9 don't recall, the other prior contractor
10 company.

11 A. The company that he worked for?

12 Q. Yes, yes.

13 A. Masterpiece.

14 Q. Masterpiece, thank you.

15 Sir, I'm going to ask you a
16 questions about who hired who next. Sir,
17 was Kalnitech hired by A.S.K. to do the
18 work?

19 A. Yes.

20 Q. Okay, thanks.

21 Did A.S.K. hire any other
22 contractors or subcontractors to assist on
23 the project?

24 MR. RAVA: Greg, can you repeat
25 that question? Could you ask it

1 KLEEMAN

2 was going to be done?

3 A. It was a fit-out of an empty
4 building, offices. You know, electrical
5 contractor's offices basically was exactly
6 what it is.

7 Q. Thank you.

8 Also a shop or just offices?

9 A. There was a shop. Yeah, it was
10 decided into some office space and some
11 shop space and some storage space.

12 Q. Okay, thank you.

13 Sir, this renovation project,
14 was the building built up or out or the
15 footprint of the building remained the
16 same?

17 A. The footprint of the building
18 remained the same. As I mentioned earlier,
19 it was a fit-out of the first floor.

20 Q. Okay.

21 A. And the basement.

22 Q. Thank you.

23 Sometimes fit-outs include some
24 other things. I'm just asking.

25 Sir, were there any

Page 44

1 KLEEMAN

2 Q. I apologize, sir. I'm trying
3 to follow from what you said recently. You
4 said that you would meet with your project
5 manager or somebody. Maybe I didn't hear
6 it.

7 A. That was Gus, the owner. The
8 GC was Gus, to meet with him about project
9 management. That's what I said.

10 Q. Okay.

11 A. He would meet with my foreman
12 to review the progress of his work.

13 Q. Thank you.

14 This is the foreman from

15 A.S.K.?

16 A. Correct.

17 Q. Okay, thank you.

18 What is that person's first
19 name?

20 A. Dwayne at the time.

21 Q. Was that Mr. Hudson? Is that
22 the same gentleman?

23 A. Yeah, Dwayne, Dwayne Hudson,
24 that was the foreman.

25 Q. Thank you.

1 KLEEMAN

2 answer?

3 (Whereupon, the referred to
4 record was read back by the court
5 reporter.)

6 MS. ALIKAKOS: Okay, thank you
7 so much.

8 Q. Sir, with regard to Gus,
9 Kalnitech, sir, if you know, was Gus there
10 day to day or did he stop in from time to
11 time, if you know?

12 A. Everyday.

13 Q. What was his schedule on the
14 project?

15 A. He was there everyday. That
16 was what he was getting paid to do.

17 Q. Okay, the expectation was Gus
18 himself, he would be there pretty much
19 everyday other than a sick day or a
20 vacation day, et cetera?

21 A. Correct.

22 Q. Okay, sir, my next few
23 questions will be about paper work that may
24 or may not have been generated for the
25 project. That's a little road map.

1 KLEEMAN

2 to just withdraw it and rephrase it.
3 I'm happy to.

4 MR. RAVA: Thank you.

5 MR. GASTMAN: It's okay. It's
6 okay. Can you hear me okay?

7 MR. RAVA: Yes.

8 MR. GASTMAN: Okay.

9 Q. Sir, how did you first hear
10 about this accident? Who told you?

11 A. I got a phone call from my
12 foreman, Dwayne Hudson, that afternoon
13 saying that someone got hurt and fell. He
14 fell.

15 Q. Okay, was that a ladder
16 accident? Is that what he told you?

17 A. Yes, someone fell off a ladder,
18 correct.

19 Q. Okay, and is it your
20 understanding, sir, it was one of the JM
21 workers, it was one of the A.S.K. workers
22 or somebody else?

23 A. It was one of the JM workers.

24 Q. Okay, alright, did Dwayne tell
25 you he saw it? He saw the accident?

1 KLEEMAN

2 look at the right side signature block. It
3 looks like there's a name, "David Kleeman"
4 and a signature and there's a title,
5 "president", and it looks like there's a
6 signature. Is that your signature, sir?

7 A. Yes.

8 Q. Did you sign this document on
9 or about March 11, 2019?

10 A. Yes.

11 Q. Okay, do you know who drew up
12 this contract, sir? Did you do it? Did
13 Ms. Vanessa Kleeman do it, did Kavita do it
14 or did someone else do it?

15 A. That was a standard contract
16 that was given to me by one of my brokers.

17 Q. When you say "standard
18 contract", it was blank until you or Kavita
19 or someone else filled out the various
20 parts of it?

21 A. Correct.

22 Q. At the top where it says
23 "owner" and "contractor" referring to Dava
24 as the owner and A.S.K. as the contractor,
25 was that something that your broker typed

1 KLEEMAN

2 place of business at 26-60 BQE West, unit
3 2, Woodside, New York 11377 and Kalnitech
4 (hereinafter subcontractor)." Do you see
5 that?

6 A. Yes.

7 Q. Have you ever seen this
8 document before today?

9 A. Yes.

10 Q. Okay, do you know who drew up
11 this contract?

12 A. Again that's a standard
13 subcontract, a standard subcontract
14 document, that we use for business. It's a
15 standard agreement.

16 Q. Well, what I want to know is
17 did someone in your office write the things
18 that are written here by handwriting as
19 "12th, March" and the year "2019" and the
20 word "Kalnitech"? Did somebody in your
21 office write that?

22 A. Yes, my office administrator,
23 Kavita.

24 Q. Okay, did Kavita or anyone else
25 in your office type up the document before

1 KLEEMAN

2 Do you see that?

3 A. Yes.

4 Q. In the center of the page, it's
5 also typed "A.S.K. Electrical Contracting
6 Corp." Do you see that?

7 A. Yes.

8 Q. Alright, and there are some
9 signature blocks. Do you see them?

10 A. Yes.

11 Q. On the left side, there is in
12 all capitals with a colon the word
13 "subcontractor". Do you see that?

14 A. Yes.

15 Q. Then there's the name typed in,
16 "Gus Stoupakis, president". Do you see
17 that?

18 A. Yes.

19 Q. Is this the Gus that you were
20 referring to today earlier in your
21 testimony?

22 A. Yes.

23 Q. Earlier today, I believe you
24 testified that Gus was the general
25 contractor for the job, is that correct?

1 KLEEMAN

2 Q. Okay, was that table left out
3 in the open at the end of work at the end
4 of the day or was it placed inside
5 somewhere or something else?

6 A. Again I wasn't there everyday,
7 so I can't answer that question because
8 every time I came there the table was in a
9 different place.

10 Q. Okay, alright, now if I heard
11 you correctly -- and correct me if I'm
12 wrong -- you hired some of the
13 subcontractors for the site, is that
14 correct, or no?

15 A. Yes.

16 Q. Okay, alright, did you hire any
17 mechanical subcontractors for the site?

18 MR. RAVA: Note my objection to
19 the term "you".

20 Go ahead. You can answer.

21 A. There was a plumber. Again you
22 have to remember in the industry, you know,
23 we work with other contractors, so, yes, I
24 had brought in a couple of contractors.

25 Q. Okay, and I'm trying to find

1 KLEEMAN

2 out specifically what were the other
3 subcontractors that you brought in, and
4 when I'm referring to "you", I'm referring
5 either to you as David Kleeman or David
6 Kleeman as, I believe, the president of
7 A.S.K. Electrical. Fair enough?

8 A. Yes.

9 Q. Alright, so I'm going to ask
10 you again in your capacity as the president
11 of A.S.K. Electrical bring in or hire any
12 mechanical contractors or subcontractors
13 for the site?

14 MR. RAVA: Note my objection.
15 You can answer.

16 A. Yes.

17 Q. Alright, and the same question,
18 did you or did A.S.K. Electrical hire any
19 HVAC contractors or subcontractors for the
20 site?

21 MR. RAVA: Just note my
22 objection.

23 You can answer.

24 A. Yes.

25 Q. Okay, did you or did you in

Page 105

1 KLEEMAN

2 your capacity as the president of A.S.K.
3 Electrical hire any plumbers for the site?

4 MR. RAVA: Objection. Asked
5 and answered.

6 Go ahead.

7 A. Yes.

8 Q. Okay, did you or you in your
9 capacity as the president of A.S.K.
10 Electrical hire any masons for the site?

11 MR. RAVA: Objection.

12 A. No, Kalnitech brought in the
13 masons.

14 Q. Okay, did you hire any other
15 subcontractors besides mechanical, HVAC or
16 plumbers?

17 A. A roofing contractor.

18 Q. Okay, now when you hired any of
19 these subcontractors, mechanical, HVAC,
20 plumbers or roofing, did you or in your
21 capacity as the president of A.S.K. sign
22 any contracts with any of these
23 subcontractors?

24 MR. RAVA: Objection.

25 You can answer.

1 KLEEMAN

2 discussion was held.)

3 Q. Let's talk about JIM. I think
4 before we were calling it JM, but I think
5 the company is JIM Associates, am I right,
6 sir, or correct me if I'm wrong.

7 A. JIM Associates, I believe.

8 Q. Right, and JIM Associates was
9 also a subcontractor at this jobsite,
10 weren't they?

11 A. Correct.

12 Q. Okay, did you hire JIM
13 Associates, did Gus hire them or something
14 else for the jobsite?

15 A. Well, Gus had a relationship
16 with them prior. He brought them in and
17 they worked in terms of the contract. Gus
18 just said, you know, pay them directly.
19 Towards the end of the job, they were doing
20 all the finish work. Gus just said, you
21 know, pay them directly.

22 Q. Well, as you said, Gus said to
23 pay them directly. Does that mean that JIM
24 Associates received payment from A.S.K.
25 Electrical or from some other entity?

1 KLEEMAN

2 A. From A.S.K. Electrical.

3 MR. RAVA: Off the record.

4 (Whereupon, an off-the-record
5 discussion was held.)

6 MR. RECCHIA: Can I have the
7 last question and answer, please?

8 (Whereupon, the referred to
9 record was read back by the court
10 reporter.)

11 Q. Did A.S.K. Electrical sign a
12 contract or enter into a contract with JIM
13 Associates for this job?

14 A. Yes.

15 Q. Okay, did you sign that
16 contract on behalf of A.S.K.?

17 A. I believe so.

18 MR. RECCHIA: Okay, alright,
19 again to the extent that it hasn't
20 already been provided, which I don't
21 think it has, I will call for a copy
22 of the contract between A.S.K. and
23 JIM. Of course, we'll put it in
24 writing.

25 MR. RAVA: I'm objecting to any

Page 127

1 KLEEMAN

2 MR. RECCHIA: Thank you.

3 Q. Alright, did you yourself ever
4 supervise JIM Associates at the jobsite?

5 MR. RAVA: Objection to the
6 question.

7 You can answer.

8 A. Did I supervise JIM? Did I
9 ever supervise JIM?

10 Q. Yes, did you ever supervise JIM
11 at the jobsite?

12 A. I discussed their work with
13 them if you want to call that supervising,
14 but did I discuss their work? Yes, with
15 Gus, yes, I have.

16 MR. RECCHIA: Counselor, I wish
17 you would let the witness answer and
18 not interrupt.

19 MR. RAVA: He answered the
20 question.

21 Q. Could you please finish your
22 answer, sir, if you did not finish?

23 A. I'm finished.

24 MR. RECCHIA: I'll just note
25 for the record that counsel

1 KLEEMAN

2 A. No.

3 Q. Alright, did you ever learn
4 that Dwayne Hudson testified that you were
5 responsible for scheduling the work on the
6 site?

7 MR. RAVA: Objection.

8 You can answer.

9 A. The electrical work I would
10 schedule, yes.

11 Q. Did you ever schedule any of
12 the other work by any of the other
13 subcontractors on the site?

14 MR. RAVA: Objection.

15 You can answer.

16 A. Depending on the subcontractor.

17 Q. Is that a yes for some
18 subcontractors?

19 MS. ALIKAKOS: Objection to the
20 form.

21 A. Yes.

22 Q. Okay, can you tell us what
23 other subcontractors you would schedule
24 some work for or the work for?

25 A. I scheduled the fence guy to

1 KLEEMAN

2 come in early on in the job.

3 Q. Okay, with any other
4 subcontractors besides the fence guy?

5 A. No.

6 Q. Okay, did you ever schedule any
7 work for the mechanical contractors?

8 A. All work was scheduled through
9 Gus and Kalnitech because he was running
10 the project.

11 Q. Okay, did you ever schedule any
12 of the work done by any of the HVAC
13 subcontractors?

14 A. Again everything was scheduled
15 through Gus in coordination.

16 Q. Okay, did you ever file any
17 documents, you as the president of A.S.K.
18 or as a vice president of Davs ever file
19 any documents, with the New York City
20 Department of Buildings listing A.S.K. as
21 the GC for the project?

22 MR. RAVA: Can I hear the full
23 question back? I couldn't hear the
24 beginning part of the question.

25 (Whereupon, the referred to

1 KLEEMAN

2 was it your testimony that Gus of Kalnitech
3 was still involved with working on this
4 project?

5 MR. RECCHIA: Note my
6 objection.

7 A. Yes, he was here. He was still
8 here everyday.

9 Q. Do you know if Gus ever
10 supervised the work of the JIM employees?

11 A. Gus supervised the work of all
12 trades except for my electricians.

13 Q. The JIM employees, I know you
14 said that was finishing work. Just explain
15 that to me. What did that finishing work
16 entail?

17 A. Painting, molding, tile,
18 flooring.

19 Q. Not the electrical work,
20 correct?

21 A. No.

22 Q. Did Dwayne Hudson ever issue
23 any payments or submit any payment
24 requisitions or anything like that in
25 connection with this project?

Page 148

1 KLEEMAN

2 unless Mr. Gastman wants to ask any.

3 MR. GASTMAN: No, we've had
4 enough testimony for one day.

5 MR. RECCHIA: Alright.

6 EXAMINATION BY

7 MR. RECCHIA:

8 Q. Mr. Kleeman, you just testified
9 that Gus was onsite everyday during the
10 work conducted by JIM. Do you remember
11 that?

12 A. Yes.

13 Q. Okay, I'd like to ask you what
14 the basis of your knowledge of that is.
15 Did you personally see Gus? Would there be
16 any records or logs that would reflect that
17 Gus was there everyday or something else?

18 A. Yes, Gus was there to the end
19 until we closed the job out, till the end.

20 Q. Is that based on your visual
21 observation of Gus being there, is it based
22 on --

23 A. Yes.

24 Q. (Continuing) someone telling
25 you or something else?